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Competition Commission of Pakistan

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I. INTRODUCTION

Pakistan is one of the few countries that have had competition legislation since before 1970; in Pakistan the legislation was in the form of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance of 1970 (“MRTPO”).² However, in October 2007, Pakistan promulgated Competition Ordinance, 2007,³ which repealed the MRTPO; disbanded the Monopoly Control Authority (“MCA”), which had enforced the MRTPO; and provided for the establishment of the Competition Commission of Pakistan.⁴

The MRTPO had been drafted with the objective to prevent undue concentration of economic power in the hands of few, and had substantive provisions that proscribed (i) undue concentration of economic power, (ii) growth of unreasonable monopoly power, and (iii) unreasonably restrictive trade practices.⁵ The Competition Ordinance, on the other hand, was promulgated with the following objectives: (i) to provide for free competition in all spheres of commercial and economic activity, (ii) to enhance economic efficiency, and (iii) to protect consumers from anticompetitive behavior.⁶ The foregoing triad captures the various facets of the notion “consumer welfare,” which is globally recognized as the *raison d’être* for having a competition regime. The Competition Ordinance was, however, a temporary legislation, which run its course in November 2009 but was extended as a temporary competition regime through Competition Ordinance, 2009, and then Competition 2010, thereby lending continuity to the regime since 2007.

In October 2010, Pakistan finally got permanent legislation in the form of the Competition Act, 2010,⁷ having the same substantive provisions—and some additional provisions relating to the establishment of the Competition Appellate Tribunal—as introduced by the Competition Ordinance 2007. The Act applies to all undertakings (firms), whether

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² Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970) (Published in the Gazette of Pakistan, Extraordinary, Feb. 26, 1970) [“MRTPO”]. For a commentary on MRTPO see Joseph Wilson, *At the Crossroads: Making Competition Law Effective in Pakistan*, 26 NW. J. INT’L L. & BUS. 565 (2006).

³ Competition Ordinance, 2007 (LII of 2007) (Published in the Gazette of Pakistan, Extraordinary, Oct. 2, 2007) [“CO 2007”].

⁴ CO 2007, Sec. 12.

⁵ MRTPO, preamble and Sec. 3.

⁶ CO 2007, preamble.

⁷ The Competition Act, 2010, Act No. XIX of 2010 (Published in The Gazette of Pakistan Extraordinary, Oct. 13, 2010) [hereinafter “The Act”].

governmental or private, and to all actions or matters which have the effect of distorting competition within Pakistan. The substantive provisions of the Act include prohibitions against (i) abuse of a dominant position; (ii) entering into agreements which have the object or effect of preventing, restricting, or reducing competition within the relevant market; and (iii) deceptive marketing practices. It also introduced a sophisticated pre-merger clearance regime.

II. COMPETITION ADVOCACY⁸

For effective discharges of its mandate, a competition agency's ambit extends beyond the enforcement of substantive provisions of competition law. It should focus on advocacy and outreach activities to promote compliance with the law, and

must also participate more broadly in the formulation of its country's economic policies, which may adversely affect competitive market structure, business conduct, and economic performance. It must assume the role of competition advocate, acting proactively to bring about government policies that lower barriers to entry, promote deregulation and trade liberalization, and otherwise minimize unnecessary government intervention in the marketplace.⁹

And as Timothy Muris wrote:

Protecting competition by focusing solely on private restraints is like trying to stop the water flow at a fork in a stream by blocking only one channel. A system that sends private price-fixers to jail, but legalizes government regulations to fix prices, has not completely addressed the competitive problem. It has simply dictated the form that the problem will take.¹⁰

The Act did envisage that combating private restraint in the market is not sufficient, and that it is equally important to review the effects of government regulation and actions. Therefore, in addition to the substantive enforcement provisions, the Act in section 29 gives a specific mandate to the Commission to do competition advocacy. Section 29 is reproduced below for reference:

29. Competition advocacy—The Commission shall promote competition through advocacy which, among others, shall include:
- a) creating awareness and imparting training about competition issues and taking such other actions as may be necessary for the promotion of a competition culture;
 - b) reviewing policy frameworks for fostering competition and making suitable recommendations for amendments to this Act and any other laws that affect competition in Pakistan to the Federal Government and Provincial Governments;
 - c) holding open hearings on any matter affecting the state of competition in Pakistan or affecting the country's commercial activities and expressing publicly an opinion with respect to the issues; and

⁸ ICN Advocacy Toolkit prepared by ICN Advocacy Working Group, *Part I: Advocacy Process and Tools*: "competition advocacy refers to those activities conducted by the competition agency which are related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through building a congenial relationship with government bodies and by increasing public awareness of the benefits of competition."

⁹THE WORLD BANK, OECD: A FRAMEWORK FOR THE DESIGN AND IMPLEMENTATION OF COMPETITION LAW AND POLICY, Chapter 6, at 93, (1998).

¹⁰ Timothy J. Muris, *Principles for a Successful Competition Agency*, 72 U. CHI. L. REV. 165, 174 (2005) at p. 170.

- d) posting on its website all decisions made, inquiries under review and completed, merger guidelines, educational material and the like.

Section 29 gives a three-prong scheme for conducting competition advocacy: (A) by creating awareness in order to promote competition culture, (B) by reviewing policy frameworks for fostering competition, and (C) by giving opinions on matters affecting the state of competition. These are discussed in detail below.

A. Creating Awareness

The Commission has taken a number of measures to create awareness about competition principles and to promote a competition culture. Some of the regular activities under this head are:

1. International Conferences
2. Competition Consultative Group
3. Sessions with Chambers of Commerce
4. Advertisements in Newspapers
5. Seminars
6. Training Sessions
7. World Competition Day
8. Brochures/Booklets
9. Press Releases
10. Compliance through Persuasion
11. Competition Law Course at Universities

1. International Conferences

An important part of the advocacy strategy of the Commission is its International Conferences. The purpose of these international conferences is to create awareness about current competition issues among national stakeholders, and to learn best practices on competition-related issues from international experiences. So far three International Conferences have been organized:

1. The first international conference was held in January 2010 on the theme of “Challenges in Implementing Competition Law in Developing Countries.”
2. The second international conference was held in November 2011 on the theme of “Competition Enforcement Challenges and Consumer Welfare in Developing Countries.”

As the Commission was in its formative years, these two themes were reflective of an issue that was relevant then.

3. The third International Conference was held in May 2013 on the theme of “Role of Competition in Fostering Trade and Investment,” discussing the role of the Commission as Pakistan and the world economy moves towards a more liberalized trade and investment regime.

The Commission is currently planning its 4th International Conference to be held in March 2015. The theme of the conference is “The Role of Competition in Facilitating Economic Revival & Sustainability.”

2. Competition Consultative Group

In 2008, to solicit feedback and guidance on competition-related matters from representatives of sector specific regulators, relevant professional bodies, business associations, and the private sector the Commission established an informal think tank called the Competition Consultative Group (“CCG”). The CCG meeting is held quarterly in different cities for wider interaction with the stakeholders. Twenty meetings of CCG have been held so far.

3. Sessions with Chambers of Commerce

The Commission has kept close liaison with the Federation of Pakistan Chambers of Commerce and Industry (“FPCCI”), Overseas Investors Chambers of Commerce and Industry (“OICCI”), Pakistan Business Council, and the American Business Council, among others. One of the more recent advocacy initiatives has been the organization of advocacy sessions across major cities in Pakistan to sensitize the business community about competition law. In the first round, advocacy sessions were held with chambers in Islamabad, Rawalpindi, Lahore, Sialkot, and Multan. These advocacy sessions have proved to be very successful in creating awareness as to the role of the Commission generally, and in the economy.

4. Advertisements in Newspapers

The Commission issued an advertisement “Businesses Beware” in leading national dailies on September 23, 2013,¹¹ creating awareness as to what constitutes deceptive marketing under Section 10 of the Competition Act. It advised businesses to avoid making unsubstantiated claims.

5. Seminars

The Commission regularly organizes seminars and conferences on various issues. In November, 2013 it held an International Seminar in Karachi, the nation’s economic capital, on the theme of “Role of Competition in Improving Investment Climate.” The seminar was very fruitful in bringing together professionals from different regulatory authorities and businessmen to discuss competition concerns faced by key industries in the face of the country’s difficult economic environment.

6. Training Sessions

The Commission has held a number of training courses for journalists, to help them report properly on competition issues by giving them a basic understanding of the competition principles and the role of the Commission. Training sessions have been also held for the staff of the Commission, in collaboration with the U.K.’s Competition and Markets Authority, under the U.K. Government’s IFUSE program.

In addition, the Commission is regularly invited to the workshops organized by the OECD at its Korean regional office. The Commission regularly sends its staff to training sessions

¹¹The advertisement can be viewed on the Commission’s website:
http://www.cc.gov.pk/images/Downloads/public_notice.jpg

organized by OECD-Korea. The Commission also acted as a host and faculty for a two-day training workshop organized by the U.S. Department of Commerce, in collaboration with the U.S. FTC and the Commission, for the officials of the Afghanistan's Competition Promotion and Consumer Protection Agency.

7. World Competition Day

Over the past two years the Commission has marked the occasion of World Competition Day, on December 5, by organizing a Seminar. Last year the theme of the Seminar was "Economic Growth and Competitiveness." The conference was attended by senior government functionaries, CEOs of private companies, lawyers, and the diplomatic community.

8. Brochures/Booklets

The Commission has prepared a booklet on "protection from anticompetitive practices,"¹² and has issued a number of brochures containing FAQs on topics such as, Competition Act, Voluntary Competition Compliance Code, Leniency Regulations, and Reward Payment Scheme. In addition, FAQs were also issued pertaining to some important decisions of the Commission.¹³

9. Press Releases

The Commission realizes the importance of both print and electronic media in promoting awareness about competition law. The media has been very supportive in this regard. Regular liaison with the print and electronic media helps the Commission in garnering a wide coverage of its initiatives and improving awareness among its stakeholders. In 2013, the Commission issued over 30 press releases.¹⁴

10. Compliance Through Persuasion

The Commission received a number of complaints regarding tendering conditions floated by National Transmission and Dispatch Company ("NTDC") and Electricity Distribution Companies (DISCOs) for the procurement of electrical equipment. These competition concerns were shared with relevant procurement agencies, highlighting their impact on competition. These agencies, such as SEPCO, LESCO, and NTDC, acknowledged that certain conditions imposed on bidders would restrict competition and therefore agreed to remove/amend such conditions in bidding documents.¹⁵

In another case, the Institute of Chartered Accountants of Pakistan ("ICAP") increased the examination fee by 118 percent compared to the fee previously charged for final

¹²http://www.cc.gov.pk/images/Downloads/research_and_publications/efn_ccp_protection_from_anti_competitive_practices.pdf.

¹³http://www.cc.gov.pk/index.php?option=com_content&view=article&id=92&Itemid=135.

¹⁴Press releases can be viewed on the Commission's website;

http://www.cc.gov.pk/index.php?option=com_content&view=article&id=97&Itemid=137.

¹⁵http://cc.gov.pk/index.php?option=com_content&view=article&id=320&Itemid=15;
<http://www.dailytimes.com.pk/business/04-Feb-2014/tender-for-power-transformers-ccp-ensures-compliance-by-lesco-with-competition-rules>;<http://www.brecorder.com/money-a-banking/198/1246287/?tmpl=component&print=1&layout=default&page=>; <http://pakedu.net/pakistan-energy-news/tenders-for-pc-poles-ccp-hails-sukkur-electric-power-company-sepco-for-addressing-competition-concerns/>.

examinations. Such an increase in fees appeared to be unreasonable, *prima facie*, violating Section 3 (3) (a) of the Competition Act 2010. The Commission shared this concern with the ICAP; the latter revised the fee structure by reducing the fee by 60 percent, thereby allaying the concerns raised by Commission and the students.¹⁶

11. Competition Law Courses at Universities

As a member of the Commission, I delivered the first ever Competition Law course at the Law Department of the Lahore University of Management Sciences in Lahore in the winter semester of 2008. Two students from that course later joined the Commission as interns. One of them is still with the Commission, now promoted to the rank of Joint Director. Since then, I have not been able to deliver a full-time course at a university, but do make myself available for lectures, when invited.

B. Policy-notes

The Commission, to date, has issued 17 policy notes (non-binding recommendations) to the government on amending certain laws or policies that have the effect of distorting, reducing, or restricting competition in the relevant market.¹⁷ Recent policy notes include:

1. A recommendation on eliminating the *Discriminatory Levy of Gas Infrastructure Development Cess on selective fertilizer plant*,¹⁸ which the government heeded immediately, and applied GIDC to all fertilizer plants.¹⁹
2. A Policy Note was issued to the Federal Board of Revenue recommending it withdraw the imposition of a “Capacity Tax” on the beverage industry, which was calculated on installed capacity rather than actual sales. It was noted that a capacity tax is a regressive way of revenue collection and gives undue competitive advantage to those manufacturers who have a high rate of capacity utilization vis-à-vis those who have less demand in market and are not able to fully utilize their installed capacity. Such a discriminatory tax regime stifles competition in the beverage industry and, as a result, small local manufacturers could be forced to close down because they could no longer be able to compete in a tax environment that overwhelmingly favored large manufacturers.

The Lahore High Court, pursuant to a petition, recently ordered the withdrawal of the capacity tax on the beverage industry. The Court constituted an Economic Commission to determine whether the imposition of a capacity tax had any negative impact on beverage manufacturers. The Economic Commission referred to the Policy Note issued by the Competition Commission and recommended the withdrawal of the tax.

3. A Policy Note regarding amendments in the Bilateral Air Services Agreement between Pakistan and Saudi Arabia (“BASA”) was also issued. The Commission took notice of

¹⁶http://cc.gov.pk/index.php?option=com_content&view=article&id=345&Itemid=151;
<http://www.nation.com.pk/business/01-Apr-2014/icap-reduces-ca-examination-fee>.

¹⁷http://www.cc.gov.pk/index.php?option=com_content&view=article&id=21&Itemid=123.

¹⁸http://www.cc.gov.pk/images/Downloads/policy_notes/gidc_policy_note.pdf.

¹⁹ GIDC: Party over for new plants, <http://jsglobalonline.com/researchReports/M03JUL14.pdf>; New GIDC rate for fertilizer sector, <http://investorguide360.com/latest-economic-news/new-gidc-rate-on-fertilizer-sector-global-research/>.

media reports that Pakistan International Airlines (“PIA”), the national flag carrier, was charging exorbitant Hajj fares. In 2008, rates were increased almost by 100 percent, from PKR. 38,500 in 2007 to PKR 70,000 for the South and from PKR 46,200 to PKR 85,000 for North sectors—infringing section 3 (abuse of dominance). The Inquiry Report also noted that the quota sharing agreement between PIA and Saudi Arabian Airline (through their respective governments) infringed section 4 (Prohibited Agreement). Since the governments were involved, enforcement action could not be taken. Therefore, the Commission in 2010 issued a Policy Note to the Government recommending it: (i) abolish any market division, quotas, and payment of royalties, and allow market forces to determine ticket prices without interference from either country's aviation authority or airlines, and (ii) amend the BASA to “allow multiple airlines to be designated by each State to operate direct scheduled services and hajj services between the two countries.”²⁰

The government amended the BASA, and one airline each from Pakistan (Shaheen Air) and Saudi Arabia (Nas Air) was allowed to fly direct routes between Pakistan and Saudi Arabia. This has fostered entry in the market, thereby increasing consumer choices, and has reduced prices. The fare in 2013 for the south was PKR 87,500 and for the north region was PKR 97,500.²¹ Given that 189,000 pilgrims from Pakistan offered *Hajj* last year, and an estimated PKR 40,000 was saved by each passenger (taking into account inflation, increase in jet fuel price, and dollar parity when compared to the prices of 2008), the consumer savings in terms of reduced prices are estimated at PRK 6 billion or U.S.\$60 million.

By sharing its advocacy efforts to increase competition in the crucial segment of Pakistan’s air transportation market—the route between Pakistan and Mecca—the Commission recently won the World Bank’s 2013 Competition Advocacy Contest in the category of “Successfully promoting pro-competition market reforms, opening of markets, and infusion of competition principles in other sectoral policies.”²²

C. Opinion on Individual Matters

In cases where the law or policy is not anticompetitive but its application is affecting the state of competition in the relevant market, the Commission may conduct a public hearing and issue an opinion on the matter. The Commission recently issued an opinion to Oil and Gas Regulatory Authority (“OGRA”) and Ministry of Petroleum and Natural Resources (“MPNR”) to eliminate discriminatory application of Inland Freight Equalization Margin (“IFEM”) asking them to create a level playing field for all refineries and oil marketing companies in crude and refined oil markets.²³

²⁰ http://www.cc.gov.pk/images/Downloads/policy_notes/basa%20policy%20note%20-%2018%20may%202010.pdf.

²¹ <http://awamtv.com/news/new-hajj-policy-2013-application-in-pakistan/>.

²² <https://www.wbginvestmentclimate.org/advisory-services/cross-cutting-issues/competition-policy/winners-2013-competition-advocacy-contest.cfm>.

²³ Competition Watchdog asks Petroleum Ministry to end Discrimination, <http://tribune.com.pk/story/745723/competition-watchdog-asks-petroleum-ministry-to-end-discrimination/>; CCP

III. CONCLUSION

The *Global Competition Review*, a London-based leading international competition law journal, has acknowledged that advocacy activities are just as important as enforcement actions. In its annual Rating Enforcement of the leading competition authorities, it once again gave Pakistan a score of 2.5 stars. The GCR noted:

Despite further resource cuts, the Competition Commission of Pakistan kept its two-and-a-half star rating this year. A huge surge in the amount of cartel fines issued showed the enforcer remains a serious organisation, and new chairman Joseph Wilson has been very active on the advocacy front both with the business community and with the government.²⁴

Competition advocacy is an inherent duty of a competition agency whether or not there is a specific provision, in the competition legislation, mandating it to perform advocacy activities. Advocacy is an ongoing process and must take a central position in the functions performed by a competition agency—both to promote a competition culture, and to combat public restraints.

for Level Playing Field for all OMCs, Refineries, <http://www.nation.com.pk/business/08-Aug-2014/ccp-for-level-playing-field-for-all-omcs-refineries>.

²⁴*Global Competition Review* has published its 14th annual survey of the world's leading competition authorities.